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Supreme Court of the United States

October Term, 1966

No. 356

JUAN RIGORES SARDINO,

Petitioner,

against

THE FEDERAL RESERVE BANK OF NEW YORK and THE SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY

VICTOR RABINOWITZ,
LEONARD B. BOUDIN,
Attorneys for Petitioner.

September 30, 1966

IN THE

Supreme Court of the United States

October Term, 1966

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PETITIONER'S REPLY

Respondent, in its brief in opposition to the petition for certiorari, makes no serious response to petitioner's contention that the Cuban Assets Control Regulations as applied in this case deprived petitioner of his property without due process of law. Petitioner relied principally on *Silesian-American Corp.* v. *Clark*, 332 U. S. 469, *Guessefeldt* v. *McGrath*, 342 U. S. 308 and *Clark* v. *Uebersee Finanz Corp.*, 332 U. S. 480. The latter two cases are not even mentioned by respondent, while the first is cited only to make the distinction between the "freezing" of petitioner's property in this case and the vesting in *Silesian-American*. This is a distinction without a difference. As the Court of Appeals pointed out in this case, it can hardly be denied that a long-continued freeze, without any termination date, is as much a taking of property as is a vesting order.

Respondent places principal reliance on *United States* v. *Central Eureka Mining Co.*, 357 U. S. 155. That was a wartime case in which the Court held that an order prohibiting petitioner from operating its gold mines was valid, because it made scarce mining equipment and sorely-needed manpower available for other purposes. We do not see any similarity to this case. More in point, we suggest, is *United States* v. *Peewee Coal Co.*, 341 U. S. 114, where, even in time of war, the United States was held liable under the Fifth Amendment for operating losses sustained by a coal mine operator whose property was possessed by the United States for a few months to avert a strike. The Court held that there was a taking of Peewee's properties, although the actual operation of the mines was not affected by any significant degree. The decision was by a divided Court. Justice Reed, concurring, recognized that "whatever the nature of the 'taking', the test should be the constitutional requirement of 'just compensation' ", 341 U. S. 119, 121. Even the dissenting justices agreed there had been a "taking", but believed there should be no compensation because "nothing of value was taken from the company." 341 U. S. at 121, 122.

Many of the cases involving application of freeze regulations cited by the respondent at pages 11 and 12 of its reply were discussed in the petition for certiorari. In *Propper* v. *Clark*, 337 U. S. 472, and *Zittman* v. *McGrath*, 341 U. S. 446, no constitutional issue was considered by the Court or even raised by the parties nor could such issues have been raised on those records. *United States* v. *Von Clemm*, 136 F. 2d 968, did not involve the taking of property but only the imposition of import controls, a matter which would not seem to raise any constitutional issue either under the Fifth Amendment or otherwise.

Respectively submitted,

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September 30, 1966